App F IX-4

Previous References 1954-55 (Con) P 20E

Later References

File No 38-57-

Serial Nos 12

MYSORE GOVERNMENT SECRETARIAT

Serial Nos One

Part B for April 1955

SUBJECT

L A Question No 396 by S
Sri Palaniyappan (Ulsoor)

WD 06701—GPB—25 000—11 8 54

19/4/55

(1)

PWD

'Y [illegible] of [illegible]

But t [illegible]session - See

8071

[illegible] 5 - [illegible] [illegible] (Ll oor)

ill the Govt [illegible] be pl eased to state

v t r it i [illegible] ecessary that they s ould obtain

[illegible] I ission en [illegible] ection o pl ns for co str ction

of [illegible] t il in in tu co por tion e es?

SECRETARIAT 6783 RKS BRANCH

Reply

NO - But the Corporation has only to be kept informed of such constructions within the Corporation limits in advance

Sey PW D

712

(1) According to Govt No PW 3624-3716/B 12 51 25 d 28 51 (Copy placed below) views in Consultation with the Commissioner Corporation of the city of Bombay and the C/E it is not necessary to obtain permission of the Corporation to construct Govt buildings in Corporation area But it is necessary to intimate the Corporation authorities so that if there are any difficulties they may be brought to the notice of Govt Hence the reply to the question will be in the negative

for appl

(2) The reply as at A may be approved

Sey (W)

5/2

VL—Should routine notes be written on small slips this note must be copied or a slip pasted on the form

AB Question no 396 - by Sr M Palaniyappan
F 74]

(2) **Routine Note** 6783

[To be used only for notes requisitions etc not intended for permanent record]

WD 03537—GPB—35 000 —3 7-53

(3) PI hrg up with a copy of
the Corporation Act

Sec'y

4) A mere reply in the negative might do
& hence such Qs, - previous which
has my appropriately be answered by
L S G Deptt

for Ho neg action if there is no objn

Sec'y

(Sri Neg) 5)
MI Please examine
12/2/55

6) Under Section 285 of the Bangalore City Municipal Corporation Act '49 Government are competent from taking a license in respect of any place in the occupation or under the Control of H H The Maharaja or the Council of Mysore and the Provision

GOVERNMENT OF MYSORE
10 FEB 1955

N B—Should routine notes be written on small slips they notes must be copied or slips pasted on this form

(4) 8071/me

L H & J W 396 & Dr M Palaniyappan

6588

11) Draft Reply } Law Sec to put up for approval
Draft Order }

16/2 Sec 17/2

12

17/2

Secy Education)

13) Govt to remarks because the
debt reports are financial does
not essentially a legal question
proposed to be raised on the floor
of the Legislature

17/2/55

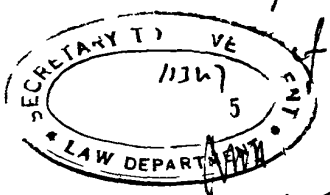
Law Secy)

Law
18-2-55

The G O dated 28 1951 (Fin T)
purports to have been issued in exercise
of powers under s 285 of the Bom Corporation Act
But s 285 has reference to licenses etc
(on appeal, transfer etc) and not to constitution
of buildings, and hence the
order purported to be made under cl x of the

6588/Law (5)

of the Bylaw Corporation Act and such exemption does not appear to have been provided for in the said Chapter. So now after powers have been conferred formerly, the Advocate General will be consulted if approved by Law Secretary



19/2/15

15

The question for consideration is whether it is necessary for the Government to obtain permission and sanction of plans for construction of Government buildings in the Corporation area In para 6 supra, it is stated that under section 285 of the Bangalore City Municipal Corporation Act, 1949 Government are exempted from taking a license in respect of any place in the occupation or under the control of H H the Maharaja or the Government of Mysore, and in view of this provision and of the G O No P W 3624-3716/B 12-51-29 dated 2-8-1951 license is not necessary But sec 285 of the Bangalore City Municipal Corporation Act referred to above exempts the Government from taking out a license ~~in respect~~ in Respect of the matters relating to that Chapter Chapter XII, but it is Chapter X that pertains to the construction of buildings In the circumstances, it may not be quite appropriate to rely on sec 285 of the Bangalore City Municipal Corporation Act

The previous Advocate-General has given his detailed opinion in connection with the unauthorised

807/20

(6)

construction of a building by the P W Department at Tarikere In para 3 of his note it is stated as follows -

> "There are many decided cases both in India and elsewhere on this question which have laid down the above principle But these cases mainly dealt with the provisions of a taxing Statute or Enactments with penal clauses adjected, as for example, certain provisions of the Motor Car Act and so on But in a case decided by the Privy Council in A I R 1947 P C 34 (Province of Bombay vs City Corporation of Bombay and another) on the question whether sections 265 and 222 of the City of Bombay Municipal Act could be enforced against the Bombay Government, their Lordships of the Privy Council held that the Government of Bombay was not bound by the provisions of that Act for the reason that the Crown was not expressly named in that Act which did not also by necessary implication bind it This principle has been followed in England "

Virtually, the Privy Council which was the then highest judicial authority, has laid down that it is not necessary for the Government to take out license for buildings But it has to be seen whether the same position has to be continued after the inauguration of the Constitution At page 731 of Basu's Constitution of India, it is observed as follows -

In India, prior to the Constitution, the English doctrine was generally followed since the prerogatives of the Crown extended to India Under the Constitution, there being no question of royal prerogative, the position deserves a re-examination In some existing Acts, there are express provisions to the effect that the Acts or portions thereof shall be or shall not be binding on the Crown and by the Adaptation of Laws Order, 1950, the 'Crown has been substituted by the word 'Government' In such cases, it is no theory but the rules of statutory construction that will determine the question But where there is no such express provision, it may be suggested that it should first be examined whether the functions of the Government that are likely to be affected by the statute in question are functions in the exercise of its sovereign powers or the functions are non-governmental in nature, e g , trading or commercial operations carried on by the State In the latter case, the State should have no discriminatory privilege by the application of any presumption '

(16)

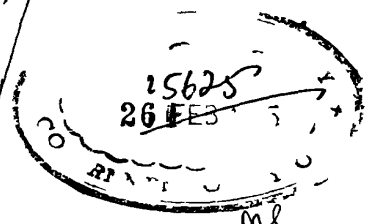
In the light of the above observations the position after the Constitution has been considerably changed If there is any specific mention of Government in any of the existing statutes, the law laid down in the statute will have to be followed In the absence of any specific mention of Government in any Act, it depends upon the nature of the construction, and if the Government construc

8071/ad

(8)

L-A Q no. 396 by Dr Palaniyappan 6588 10907/ws

a building for purely a trading or commercial purpose, the Government may have to take out a license for such a construction, But if the Government construct a building for a Government Department in sovereign capacity, there will be no need to obtain a license for such a construction



Secretary - C S G & Education) 26/2/55

7) The Views of the Law Secretary Counsel is for Remisal no dept replies and note put up are for approval

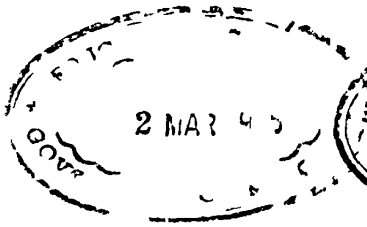
Secretary)

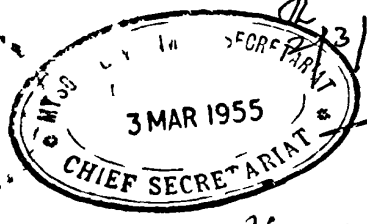
8) 28/2

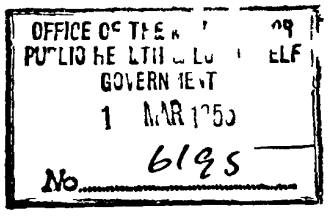
9) Shame Cancelled the dat- in Consonance with the above noted legal opinion for approval

28/2/55

Minister) 10) 2/3/55







11) The typed replies are for signature and to refer the file to the Chief Asst for taking replies

22) 3/3

3/3

23) four copies taken Chief Asst to file returned

MM Supdt 3/3

8071/ml

L A Q no 396 & Dr Palaniyappan

(9)

24) P A to Minister L Sq

Returned to A/s ML

OFFICE OF THE MINISTER FOR PUBLIC HEALTH & LOCAL SELF GOVERNMENT
5 MAR 55
No 6382

MUNICIPAL BRANCH
12 APR 1955

13/4/55

CM 38-54-12

This contains Law Opinion This may be disposed

166 S -2

Extracts of the opinion of the ~~Attorney~~ Advocate (1) -General, on file bearing Dirry No 355/111, on subject: Unauthorised construction by the P W.Dept. Tarikere ----

"The question is whether Section 112 of the Town Municipalities Act, which requires a person proposing to construct any building, to take the permission of the Municipal Council in that regard in manner provided by that section, is a provision of law which makes it obligatory on the part of a State to obtain such permission when it proposes to construct buildings or its land within the Municipality

The maxim "Rex nullest lie per ascun Statute, si il ne soit expressment nosme," whose meaning is that the king is not bound by any Statute, if he be not expressly named therein to be so bound, refers to a general privilege enjoyed by the Crown and is in no way dependent upon the local or Imperial character of the law, and takes effect in all cases when the Crown is not named in the Statute or in all cases where the enactments do not take away the privilege either in express terms or by necessary implication

2 Even in the absence of statutory provisions, Crown property has been held exempt from taxation where such property was used as stables for the Regiment of the Horse Guards or whether a building was used for the County Police Station, etc etc. Although there was some difference of opinion at one stage as to whether this principle of law which was recognised in England was applicable to our country, there is now no longer any doubt about it and it is indisputable that the law in India is today the same as in England on this matter. The exemption of the properties of the Union and the States from the incidence of taxation for under the laws of the States and the Union respectively is now provided by Articles 285 and 289 of our Constitution.

3 There are many decided cases both in India and elsewhere on this question which have laid down the above principle But these cases mainly dealt with the provisions of a taxing Statute or enactments with penal clauses adjected, as for example, certain provisions of the Motor Carriage and so on but in a case decided by the Privy Council in A I R 1947 P C 31 (Province of Bombay vs City Corporation of Bombay and another) on the question whether sections 265 and 222 of the City of Bombay Municipal Act could be enforced against the Bombay Government, their Lordships of the Privy Council held that the Government of Bombay was not bound by the provisions of that Act for the reason that the Crown was not expressly named in that Act which did not also be necessary implication bind it This principle has been followed in England in IX A C 61, 1904 (2) K.B. 164, 1902(2) K P 73, 1912 (1) K B 490 and 1940 (1) K B 427.

In one of the above cases, namely, in 1904 (2) K B 161 the report of another case has been printed at the foot-note of page 165. In that case it was held that a bye-law made under the Public Health Act of 1875 and clearly designed to safeguard the health of the public did not bind the Crown and gave the local board no control over one of his Majesty's prisons In the main case, the report of which commences at page 164, it was held that the provisions of the Locomotives Act of 1865 regulating the speed of locomotives did not apply to the Military Department of the Crown A close examination of these decisions reveals that the principle underlying the maxim that the Crown is not bound by a Statute unless expressly named therein, rests on the fact that the property of the Crown is always used for a public purpose and maintained for purposes of State administration or for purposes of Government which were according to the theory of the Constitution -- administered by the sovereign. That being the principle underlying the maxim, the question whether it applies to the properties of the States and the Union, having regard to their present constitutional structure. Having regard to the non-existence of the Crown in our country today and the divergence of judicial opinion and political thought on the qu

(2)

is no doubt not free from difficulty But whatever may be answer to this question in other circumstances, and in relation to other Statutes and enactments, it seems to me that in so far as the applicability of section 112 of the Town Municipalities Act to the properties of the State is concerned, the answer has to be that the maxim applies

4 This conclusion which I have reached after giving the matter my most anxious consideration appears to me to be the correct view for more reasons than one Under the scheme of the Town Municipalities Act, it is clear that the State is a controlling authority under the Town Municipalities Act, and it is clear that the State is a controlling authority under the Town Municipalities Act as can be seen from the provisions of Chapters XII and XIII of the Act When again, in regard to the particular matter relating to the regulation of structures and buildings and construction or use of buildings, it is the State that has the power to make bye-laws under section 48 clauses (q) and (r) of the Act It would lead to curious results, if the State which has such control and power, is obliged to obtain permission from a body which is subordinate to it, in regard to a matter over which it has itself a power to make necessary bye-laws If the word 'person' in section 112 of the Act, whatever may be the meaning of that word in other contexts, cannot be interpreted so as to include the State, then it may lead to the result that even a Municipality, for constructing a building required for its own use would have to obtain the permission contemplated by section 112 of the Act This would be the broad consequence of such an interpretation.

5 As part of, the State has been vested by the Constitution and functions under it and the executive powers of the State which are vested in it under the Constitution, require for its exercise the construction of all such buildings as may be necessary for the due performance of its executive functions Indeed, under Article 282 of the Constitution the State may make any grant for any public purpose notwithstanding, that the purpose is not one with respect to which the legislature of the State may make laws The construction of a building which is necessary for the due performance of the executive functions of the State under the Constitution must be regarded as a right conferred by the Constitution which cannot be curtailed or controlled by a law like the Town Municipalities Act In a similar case reported in I.L.R.34 Bombay 252, it was held that the G I P Railway Company which possessed statutory powers under the Indian Railway Act to do all acts necessary for making, maintaining, altering, repairing and using the railway was not bound to obtain a license under the City of Bombay Municipal Act, before using their land for storing timber, although the Act prohibited such use without a license

I am therefore of opinion that the stand taken by the President of the Tanjore Town Municipal Council is unsupportable.

(sd) A. Ramanadha Iyer,
Advocate-General
20-10-51

Law 10 22/10

for Secy to Govt
Law Dept

(3)

PROCEEDINGS OF THE GOVERNMENT OF MYSORE

GENERAL AND REVENUE DEPARTMENTS

G O No P W 3624 3716/B 12 51 29 Bangalore Dated 2nd August 1951

Government Buildings within the Bangalore City Corporation limits

Directs that the Corporation be kept informed in future of the construction (including additions alterations and improvements) of ——— in advance

Read --

Correspondence ending with letter No A6 P R 9/49-50 dated 17th June 1950 from the Commissioner Bangalore Corporation stating that it has been found from experience that in several cases proposals made by Government for additions or alterations to their premises if they are situated in the midst of residential area cla h with public interests in one way or the othe and if prior intimations are given to the Corporation of such proposals it will give the Corporation a chance to point out the difficulties or suggest modifications in time and requesting orders in this matter

2 U O No 268 dated 26th July 1950 from the Chief Engineer of Mysore, furnishing his remarks in the matter

ORDER NO P W 3624-3716/B 12-51-29 DATED BANGALORE 2ND AUGUST 1951

Under Section 285 of the Bangalore City Municipal Corporation Act Government are exempted from taking a license in respect of any place in the occupation or under the control of His Highness the Maharaja o the Government of Mysore or in respect of any property belonging to His Highness the Maharaja or the Government This prerogative is being exercised by Government in respect of construction of Government buildings in the Corporation limits

2 It is now felt that it is desirable to keep the Corporation informed in future of the construction of Government buildings (including additions alterations and improvements) in the Corporation limits It is therefore directed that the Bangalore City Corporation be kept informed of all such future constructions in respect of Government buildings within the Corporation limits in advance

S BILIGIRI RAO
Secretary to Government
Public Works Department

To
The Secretaries to Government
The Chief Engineer of Mysore Bangalore
The Other Heads of Departments
The Commissioner Bangalore City Corporation (through the Mayor)
The Accountant-General in Mysore Bangalore (Works Audit Department)

Note (6)

L A G No 396 G

L. N Palonyahan (Kdown)
to obtaining permission and
sanction for Plans for Schools
& Government Buildings in
the Corporation area

Sec No 285 of the
Corporation Act No 19, reads as follows -
"Nothing in this Chapter shall
be Construed as requiring the
Government to take out a license
in respect of any place in the
Occupation or under the Control
of H H the Kabaraya or the
Government or in respect of any
Property belonging to H-H the
Kabaraya or the Government"

In View of the above
Provision Government is exempted
from obtaining a license for
~~Constructing~~ any Sanitation
the Government in the P W Department
have power and duty to the effect
that the Corporation of the City

(7)

of Bangalore be kept
informed of all such
Civil Criminal Cantonments
& Government Buildings
including additions, alterations,
and improvements) in the
Cantonment limits

The Advocate General
has the right to appear in Parliament
Case

The Parliament of
objects the PIL Petitioner
a question when the municipal
limits of Bangalore without the
consent of the State municipal
Council or the case the
Advocate-General is of opinion
that the State is created by the
Constitution and the functions
under it And the Executive
powers of the State which are
vested in it under the Constitution,
require for its exercise the
Construction of all such buildings
as may be necessary for the performance
of its Executive functions and

Page D

(8)

In Law, under Article 282
of the Constitution the State
may make any grant
for any public purpose
and while stressing that the
purpose is one in respect of
which the Legislature of
the State may make laws
the Constitution of India which
which is necessary for the
due performance of the
Executive ~~performance~~ functions of the
State under the Constitution
must be regarded as a right
Granted by the Constitution
which cannot be curtailed
or Controlled by any law like
the Town Municipalities Act

In the circumstances
Council need not obtain permission
or sanction of the Government
Government Notifications

Regards
Yours

(7)

[illegible] Ju[illegible] 1955

[illegible] by [illegible] ([illegible])

[illegible]

[illegible] by [illegible] Secretary of
Interior for Public Health and
[illegible] Overnment

[illegible] over [illegible]
[illegible] ed to [illegible] -

[illegible] construct buildings
[illegible] ould obtain permission in its sovereign capacity
[illegible] ction of land for
[illegible] tion of [illegible]
[illegible] in the corporate [illegible]

[signature]

(Secretary's name)
for Secretary to Government,
[illegible] Department

[illegible]

(10)

Note on Legislative Assembly question 396 by Sri L Palaniyapoan (Ulsoor) regarding obtaining permission and sanction of plans for construction of Government Buildings in the Corporation area

- - 0 - -

Section No 285 of the Corporation Act, 1949, reads as follows -

"Nothing in this chapter shall be ~~construed~~ construed as requiring the Government to take out a license in respect of any place in the occupation or under the control of His Highness the Maharaja or the Government or in respect of any property belonging to His Highness the Maharaja or the Government"

In view of the above provision, Government is exempted from obtaining a license for any construction the Government in the Public Works Department have issued an order* to the effect that the Corporation of the City of Bangalore be kept informed of all constructions of Government buildings (including additions, alterations, and improvements) in the Corporation limits

Flag 'T'

The Tarikere Town Municipal Council objected the Public Works Department constructing ~~a quarters~~ Govt Buildings within the municipal limits of Tarikere without the sanction of the said municipal council In this case, the Advocate-General gave opinion that the State is created by the Constitution and the functions under it And the Executive powers of the State which are vested in it under the Constitution, require for its exercise the construction of all such buildings as may be necessary for the performance of its executive functions

Flag D

Indeed, under Article 282 of the Constitution, the State may make any grant for any Public purpose not withstanding that the purpose is not one with respect of which the Legislature of the State may make laws The construction of the building which is necessary for the due performance of the Executive functions of the State under the

(11)

Constitution must be regarded as a right conferred by the Constitution which cannot be curtailed or controlled by the Law like the Town Municipalities Act

In the circumstances, Government need not obtain permission or sanction of plans for constructing Government buildings The Law Secretary's opinion may kindly be perused (Paras 15 to 16)

(V Hanumanthappa)
for Secretary to Government,
Education & L S G Departments

knr-3-3-3